

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

| | | | |
|-----------------------|---|------------------|-------------|
| GARY KENNELLEY | | | |
| DELORA KENNELLEY |) | | |
| Plaintiff |) | COMPLAINT | |
| vs. |) | | |
| CHURCHILL DOWNS, INC. |) | CIVIL ACTION NO. | 1:22-CV-155 |
| PRESQUE ISLE DOWNS & |) | | |
| CASINO, LLC |) | | |
| Defendants |) | | |

Plaintiffs, GARY KENNELLEY and DELORA KENNELLEY, for their Complaint against Defendants, respectfully alleges that:

JURISDICTION AND VENUE

1. Upon information and belief, Jurisdiction exists as against the defendants pursuant to 28 USCA Sec. 1332 in that (a) plaintiff is domiciled in and is a citizen of New York State; (b) defendants, CHURCHILL DOWNS, INC. and PRESQUE ISLE DOWNS & CASINO, LLC are a business corporations, established under the laws of Kentucky and Pennsylvania respectively and are owners of the premises where the injuries occurred in the Commonwealth of Pennsylvania; and (c) the amount in controversy exceeds the sum of \$75,000.00, exclusive of interest and costs.

2. Venue in this court is proper pursuant to 28 USCA Sec. 1391, in that jurisdiction is founded only on diversity of citizenship and the claim arose in the judicial district of the United States District Court for the Western District of Pennsylvania.

FACTS

3. On December 3, 2020, Plaintiff, GARY KENNELLEY, was injured and otherwise damaged at the business premises of defendant PRESQUE ISLE DOWNS & CASINO, LLC believed to be owned by CHURCHILL DOWNS, INC., believed to be a Kentucky Corporation when Plaintiff, GARY KENNELLEY, stepped up on the sidewalk over the curb and the surface was ice and slush, which caused his left foot to slip and he to fall onto his right ankle, knee, hip and leg, injuring them and his lower back.

4. Upon information and belief, at all times relevant hereto, defendant PRESQUE ISLE DOWNS & CASINO, LLC was a limited liability domestic corporation with its principal place of business on premises located in, Erie, PA, County of Erie.

5. When the accident complained of occurred, Plaintiff, GARY KENNELLEY, was proceeding to enter the premises of defendants, CHURCHILL DOWNS, INC. and PRESQUE ISLE DOWNS & CASINO, LLC.

FIRST CAUSE OF ACTION

Plaintiff repeats each allegation contained in paragraphs 1-5. as if repeated here verbatim.

6. On 12/03/2020, as a result of the negligent behavior of the defendants' employees, a dangerous condition existed and was maintained at the Presque Isle Downs and Casino, LLC premises, a business owned and operated by defendants and located at 8199 Perry Highway, Erie PA, County of Erie.

7. The Defendants knew, or in the exercise of reasonable care should have known, that there was a dangerous condition on the property that could result in injury to the users of the 8199 Perry Highway, Erie PA, County of Erie premises.

8. Plaintiffs allege that the Defendants negligently failed to reasonably inspect the property and detect the dangerous conditions, and/or willfully, recklessly, and negligently failed to remove the dangerous condition within a reasonable period of time and failed to take reasonable precautions to prevent injuries to foreseeable users of the premises as a result of the dangerous conditions.

9. The defendants failed to maintain their premises in a reasonably safe condition for foreseeable users.

10. The defendants failed to remove the slush from the sidewalk leading to its main entrance.

11. The defendants failed to salt or place grit on the slippery sidewalk.

12. The slippery slushy condition of the sidewalk had existed for a period long enough that the employees of defendants should have noticed it, acted to remedy the condition, or to take action to prevent people from encountering it.

13. As a proximate result of the negligence of CHURCHILL DOWNS, INC. and PRESQUE ISLE DOWNS & CASINO, LLC, their employees and others acting under their authority, supervision, or control, plaintiff, Gary Kennelley, suffered multiple injuries, including serious injuries to his spine (two herniated discs), possible activation of previously dormant conditions and aggravation of pre-existing conditions, requiring medical, and possible surgical, treatments, suffered pain, nervous and emotional distress, incurred medical expenses, lost income, and suffered and will incur other economic losses, all to his general damage in an amount that exceeds \$75,000.00.

SECOND CAUSE OF ACTION

Plaintiff, DELORA KENNELLEY, repeats each allegation contained in paragraphs 1 – 13 as if repeated here verbatim.

14. Plaintiff, DELORA KENNELLEY is legally married to Plaintiff Gary Kennelley.

15. As a result of the defendants' failure to maintain their premises in a reasonably safe condition, Gary Kennelley was seriously injured which has caused her to suffer loss of her husband's services, society, and consortium.

WHEREFORE, Plaintiffs, GARY KENNELLEY and DELORA KENNELLEY demand judgment against each of the defendants in the amount of \$750,000.00 for compensatory damages, delay damages, interest allowable by law, the costs of this action, and such other relief as the Court deems just and proper.

Respectfully submitted,

S/ Brian Chapin York

BRIAN CHAPIN YORK, ESQ.
Attorney for Plaintiffs (NY 1503713)
106 Forest Avenue
Jamestown, New York 14701
Phone: 716-664-1140; Fax 716-483-3671; e-mail: briancyork@windstream.net